

# Hopkins v. Clemson Agricultural College of South Carolina

United States Supreme Court

221 U.S. 636

HOPKINS v. CLEMSON AGRICULTURAL COLLEGE OF SOUTH CAROLINA

Argued: December 7, 1910. --- Decided: to docket January 30, 1911

In his complaint the plaintiff alleged that he owned a valuable body of fertile bottom lands, on the west side of Seneca river, on which he had raised large crops from the time of purchasing the farm, in 1880, until 1895, when the defendant, by its trustees, erected and maintained a high embankment on the eastern side of the river. This dyke was to protect the lands of the college from overflow, but its construction so narrowed the channel of the river that it caused the rapid current of the stream in time of high water to flow across the lands of plaintiff, whereby the natural bank had been destroyed, the rich soil had been washed away, and his property practically ruined for agricultural purposes, and 'during the period aforesaid said injury has been and still is continuous from day to day and year to year.' He prayed for judgment for \$8,000; that the defendant be required to abate and remove the dyke and restore the condition prevailing prior to its construction, and for general relief.

The defendant denied all the allegations of the complaint, and alleged that the college had no title to the land, or any other property in connection with the establishment and maintenance of the institution; that the construction of the dyke was authorized by the state, and had been built by the college, as a public agent, on land the title and possession of which was in the state. It therefore prayed that the complaint be dismissed.

By stipulation the case was heard solely on the question of jurisdiction. Evidence was introduced showing that by his will, probated April 20, 1888, Thomas G. Clemson left personal property and the 'Fort Hill' place, consisting of 814 acres, providing that whenever the state of South Carolina should accept the property for the purpose of founding an agricultural college, his executor should convey it to the state, to be held so long as it in good faith devoted the property to the purposes of the donation, such college to be governed by a board of trustees, which should never be increased to more than thirteen. Seven trustees named by the testator, and their successors, were to have the right to fill vacancies in their number, but the legislature might elect six other trustees.

On November 27, 1889, the state accepted the Clemson bequest, subject to the terms set forth in the will, and enacted that upon the transfer of the property to the state by the executor, a college should be established in connection with the devise, to be styled the Clemson Agricultural College of South Carolina, to be situated at Fort Hill, on the plantation so devised, in which should be taught all branches of study relating to agriculture, the college to be under the management of a board of thirteen trustees, composed of the seven nominated by the will, and their successors, and six members elected by the legislature.

Sec. 4 of the charter provided:

'That the said board of trustees is hereby declared to be a body politic and corporate, under the name and style of the Clemson Agricultural College of South Carolina. They shall have a corporate seal, which they may change at their discretion; and in their corporate name they may contract for, purchase, and hold property, for the purpose of this act, and may take any property or money conveyed by deed, devise, or bequest to said college, and may hold the same for his use and benefit; Provided that the conditions of such gift or conveyance shall in no case be inconsistent with the purposes of this act and shall incur no obligation on the part of the state. They shall securely invest all funds and keep all property which may come into their possession, and may sell any of the personal property not subject to trust, and reinvest the same in such way as they may deem best for the interest of said college. They may sue and be sued, plead and be impleaded, in their corporate name, and may do all things necessary to carry out the provisions of this act, and may make by-laws for this purpose if they deem it necessary.'

By the act of January 4, 1894, it was declared that fifty convicts might *be employed by the trustees of Clemson College in dyking Seneca river, adjoining the college farm, and such other work as the trustees deem useful, for twelve months.*

In April, 1894, a resolution was passed by the board of trustees concerning the work of 'building the dykes necessary to protect the bottom lands of Clemson College.' It does not appear when this work began or was finished, but various extracts from the minutes of the trustees, from April, 1894, to July, 1905, were introduced in evidence from which it appeared that the dyke was constructed according to plans and specifications approved by the board, under the direction of engineers selected by the board,

and that payments were made by it on account of work thereon. The embankment was either wholly or partially washed away, and, in 1903, a resolution was adopted by the board 'to have a survey made of the dyke for the purpose of submitting estimates of the work necessary to be done to afford protection to the bottom lands on the college property,-the cost of the estimate to be based on the recent flood.'

Evidence was introduced as to the property owned by the college and the sources of its income, from which it appeared that a tract of land, partially paid for by the state, had been conveyed to the college in fee simple, and other land had been conveyed for college purposes. The state appropriated more than \$100,000 per annum, which, with the interest on the securities passing under the residuary clause of Dr. Clemson's will, constituted the main source of income, though the college did receive about \$6,500 per annum from tuition, rent, sale of dairy products, and the proceeds derived from the electric plant and textile department.

There is copied in the record the act of 1894 to incorporate Clemson College for the purpose of police regulation over the territory within 5 miles of the college building.

The trial court found that the current expenses were paid out of interest on the donation and from the annual appropriations by the state; that the college had no property which could be sold under execution; and that title to the land on which the dyke was erected was in the state. Referring also to the act of 1894, conferring municipal powers on Clemson College, the court held that the defendant was a public agent which could not be sued without the consent of the state; that such consent was not given by the provision of the charter that the trustees 'might sue and be sued, plead and be impleaded, in their corporate capacity,' inasmuch as that related to contracts made for college purposes, and did not warrant suits against a public agent for a tort. Holding that the state was an indispensable party, and had not given its consent to be sued, the court dismissed the complaint.

On the appeal, the plaintiff, in his assignments of error, contended that the title to the land was in the state only as trustee; that the college was not a public corporation, but a private educational institution, without governmental powers; that it had not been established or endowed by the state, and was not governed by the state, or solely by trustees appointed by the state (*Dartmouth College v. Woodward*, 4 Wheat. 634, 4 L. ed. 658); that in addition to the equitable ownership of the Fort Hill place, it owned certain lands in fee simple, which were subject to levy and sale, and that the corporation was liable for its own torts.

The 23d assignment of error was as follows:

'Because the 14[[[[[[[[th Amendment]]]]]]] to the Constitution of the United States provides: 'Nor shall any state deprive any person of life, liberty, or property without due process of law.' The allegations of the complaint

show that plaintiff has been deprived of his property for all practical purposes as agricultural lands as effectually as if there had been a physical taking thereof; that plaintiff has thus been deprived of his property by the defendant corporation, acting by and through its board of trustees, and this constitutional guaranty has been violated by such action, whether taken pursuant to an act of the legislature or otherwise, and his Honor erred in not so holding.'

The supreme court of the state adopted the opinion of the trial judge, and on the ground that the state was a necessary party and had not consented to be sued, dismissed the bill of complaint. 77 S.C. 12, 57 S. E. 551. Thereupon the plaintiff sued out a writ of error to this court.

Messrs. R. T. Jaynes and Joseph A. McCullough for plaintiff in error.

Mr. James P. Carey for defendant in error.

Statement by Mr. Justice Lamar:

Mr. Justice Lamar, after making the foregoing statement, delivered the opinion of the court:

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